

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THOMAS ZACHARY PETERS,

Plaintiff,

v.

OPINION AND ORDER

23-cv-232-wmc

SHERIFF WESLEY REVELS,
CHIEF DEPUTY CHRISTOPHER WEAVER,
CAPTAIN STAN HENDRICKSON,
LIEUTENANT RYAN HALLMAN, SERGEANT JEFF SCHWANZ,
INSPECTOR MARTY ORDIAINS,
MONROE COUNTY SHERIFF'S OFFICE AND/OR JAIL, WI D.O.C.,
and OFFICE OF DETENTION FACILITIES,

Defendants.

Plaintiff Thomas Peters, who is representing himself and was a state pretrial detainee at the Monroe County Jail at the time of the events underlying this lawsuit, filed this proposed third amended complaint against Sheriff Wesley Revels, Chief Deputy Christopher Weaver, Captain Stan Hendrickson, Lieutenant Ryan Hallman, Sergeant Jeff Schwanz, Inspector Marty Ordians, "Monroe County Sheriff's Office and/or Jail," Wisconsin Department of Corrections, and the Office of Detention Facilities. (Dkt. #26.) Twice previously, the court dismissed Peters' complaint for not complying with Federal Rules of Civil Procedure 8 and 20. (Dkt. ##17, 25.) The next step is to screen Peters' third amended complaint under 28 U.S.C. §§ 1915(e)(2), 1915A. The court will allow plaintiff to proceed on Fourteenth Amendment due process claims against Schwanz, Hendrickson, and Hallman and a First Amendment claim against Schwanz.

ALLEGATIONS OF FACT

In his third amended complaint, Peters appears to allege that Sergeant Schwanz directed homophobic slurs “at or around” Peters and made inappropriate comments, like “come get your favorite - wieners” and “how many balls can you fit in your mouth.” (Dkt. #26, at 2.) Peters alleges that he attempted to resolve the problem by talking directly to Schwanz who said, “if you don’t like it, then don’t come to jail.” He then alleges that “a [Prison Rape Elimination Act (“PREA”)] Complaint was filed,” and the Monroe County Sheriff’s Office did not respond, so he submitted a grievance. Lieutenant Hallman allegedly denied that Schwanz had done anything wrong, called Peters’ complaint “redundant,” and apparently denied the grievance. Peters appealed, but Captain Hendrickson also minimized Schwanz’s actions. Peters alleges that Schwanz retaliated against him for filing a grievance by destroying his personal property, issuing false conduct reports via lower-ranked officers, and placing him in segregation without cause.

Next, Hallman and Hendrickson met informally with Peters, instructing him to have “thicker skin,” and denied his request to speak with a third-party sexual abuse advocate or law enforcement. When Peters’ friend called the jail, Chief Deputy Christopher Weaver allegedly “justified” Schwanz’s behavior and asked if she knew what Peters was charged with. Peters alleges that Sheriff Wesley Revels took staff at their word and did not investigate his complaints. Peters alleges that many of his complaints were “lost or denied,” and after Peters sought help from the Wisconsin Department of Corrections Office of Detention Facilities, Inspector Marty Ordians dismissed all claims of misconduct without investigating.

OPINION

To start, there is no private right of action under PREA, meaning plaintiff may not sue defendants under that statute. *Bradley v. Giebel*, No. 20-C-558, 2020 WL 2748087, at *2 (E.D. Wis. May 27, 2020).

As to his constitutional claims, plaintiff was a pretrial detainee, so his harassment-based claims arise under the Fourteenth Amendment's Due Process Clause, not the Eighth Amendment's prohibition on cruel and unusual punishment. *Miranda v. Cnty. of Lake*, 900 F.3d 335, 350 (7th Cir. 2018). Nevertheless, given the similarity between the Eighth and Fourteenth Amendment standards, Eighth Amendment cases are relevant here. *See Smith v. Dart*, 803 F.3d 304, 310 (7th Cir. 2015) ("there is little practical difference, if any, between the standards applicable to pretrial detainees and convicted inmates when it comes to conditions of confinement claims"). "Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest or deny a prisoner equal protection of the laws." *DeWalt v. Carter*, 224 F.3d 607, 612 (2000). However, the Seventh Circuit reversed dismissal of an inmate's Eighth Amendment claim when defendant had suggested plaintiff put his penis inside another inmate and urinated in front of plaintiff while smiling. *Beal v. Foster*, 803 F.3d 356, 358 (7th Cir. 2015). The court explained that defendant had labeled plaintiff as a homosexual, causing him to be harassed by other inmates and suffer psychological harm. *Id.* at 358-59.

Here, plaintiff adequately alleges a Fourteenth Amendment claim because, similar to *Beal*, plaintiff alleges that Schwanz, presumably in the presence of other inmates, made

sexual innuendos and directed homophobic slurs at plaintiff that would suggest that he was homosexual. Plaintiff further alleges that he was confined to a cell for his own protection, which, generously construing plaintiff's complaint, suggests that he was at-risk of attack from other inmates because of Schwanz's suggestion that he was homosexual. Accordingly, plaintiff may proceed on a Fourteenth Amendment claim against Schwanz. Plaintiff has also stated Fourteenth Amendment claims against Captain Hendrickson and Lieutenant Hallman when they allegedly minimized Schwanz's actions and encouraged plaintiff to have "thicker skin."

Plaintiff has also stated a First Amendment retaliation claim against Schwanz. To state a First Amendment retaliation claim, a plaintiff must allege that: (1) he engaged in activity protected by the First Amendment; (2) the defendant took actions that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) the First Amendment activity was at least a "motivating factor" in the defendant's decision to take those actions. *Bridges v. Gilbert*, 557 F.3d 541, 546, 552 (7th Cir. 2009). Plaintiff adequately alleges that he engaged in a protected activity by asserting that he filed a grievance based on Schwanz's verbal harassment. *Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) ("filing a non-frivolous grievance is a constitutionally protected activity sufficient to support a retaliation claim"). Schwanz's responses -- destroying plaintiff's personal property, having other officers charge him in conduct reports, and putting him in segregation -- were sufficiently adverse to deter a person of "ordinary firmness" from filing another inmate complaint, so the second element is satisfied. As for the third element, the court will accept plaintiff's conclusory allegation that Schwanz retaliated against him. *See*

Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002) (holding that a conclusory allegation that defendants acted adversely because of protected conduct is sufficient to state a claim for retaliation).

Plaintiff should bear in mind that, to succeed at the summary judgment or trial stage, he will need to submit *specific* evidence that defendant's actions were motivated by a desire to punish him for filing a grievance against defendant. The sequence of the two events alone is insufficient proof of retaliation. *See Springer v. Durflinger*, 518 F.3d 479, 485 (7th Cir. 2008) ("as we have stated on many occasions, timing alone is insufficient to establish a genuine issue of material fact to support a retaliation claim") (quotation marks omitted); *Lang v. Ill. Dept. of Children & Family Servs.*, 361 F.3d 416, 419 (7th Cir. 2004) ("Close temporal proximity provides evidence of causation and may permit a plaintiff to survive summary judgment provided that there is also other evidence that supports the inference of a causal link." (citation omitted)).

However, plaintiff has not stated claims for constitutional violations under 42 U.S.C. § 1983 against Sheriff Revels or Chief Deputy Weaver because they did not have personal involvement in the alleged deprivations other than refusing to investigate, and minimizing Schwanz's conduct during a phone call, respectively. *See Pearson v. Manlove*, No. 20-CV-487-WMC, 2021 WL 1966601, at *3 (W.D. Wis. May 17, 2021) (§ 1983 requires personal involvement in the alleged constitutional violation). Nor does he state a claim against Ordians whose only role was "dismiss[ing] all claims of misconduct." *See Brown v. Carr*, No. 20-CV-0206, 2021 WL 1663561, at *2 (E.D. Wis. Apr. 28, 2021) (no constitutional claim against defendants whose only role was denying plaintiff's inmate complaints and

appeal). The Monroe County Sheriff's Office/Jail are not proper defendants, as those are buildings, not people, so they do not have the legal capacity to be sued for violating plaintiff's rights under § 1983. *See Smith v. Knox Cnty. Jail*, 666 F.3d 1037, 1040 (7th Cir. 2012); *Whiting v. Marathon Cnty. Sheriff's Dep't.*, 382 F.3d 700, 704 (7th Cir. 2004). Even construing plaintiff's complaint to allege a claim against Monroe County itself, the county would only be liable if the harm resulted from a policy or custom, which he does not allege. *Glisson v. Indiana Dep't. of Corr.*, 849 F.3d 372, 379 (7th Cir. 2017) (en banc). Finally, the Wisconsin Department of Corrections and the Office of Detention Facilities are agencies of the State of Wisconsin, and the state and its agencies are not suable for civil rights violations. *Thomas v. Illinois*, 697 F.3d 612, 613 (7th Cir. 2012).

ORDER

IT IS ORDERED that:

- 1) Plaintiff Thomas Peters is GRANTED leave to proceed on Fourteenth Amendment due process claims against Jeff Schwanz, Stan Hendrickson, and Ryan Hallman and a First Amendment retaliation claim against Schwanz.
- 2) Plaintiff is DENIED leave to proceed on any other claim, and defendants Wesley Revels, Christopher Weaver, Marty Ordians, Monroe County Sheriff's Office and/or Jail, Wisconsin Department of Corrections, and Office of Detention Facilities are DISMISSED.
- 3) The clerk of court is directed to ensure that the United States Marshals Service serves defendants with a copy of plaintiff's complaint and this order. Plaintiff should not attempt to serve defendants on his own at this time.
- 4) For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

- 5) Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- 6) If plaintiff is transferred or released while this case is pending, it is plaintiff's obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his claims may be dismissed for his failure to prosecute them.

Entered this 13th day of November, 2024.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge